App F IX 4

Previous References
Fml 207-27-12
56-44-12

1943-44
(M)

File No 42-43
Serial Nos 120-121

Later References
Fml 138-46 (5.6)

GENERAL AND REVENUE SECRETARIAT

Serial Nos 2

Part B for May 44

SUBJECT

Deputy Commissioner as interim President at the Election of Non-Official Presidents of Fml Cls

Fr 121 2 Fm U.S. Shipping Dept
Offers Certain Information
L 11811 3 23 5 44

From the Deputy Comm, Kisumu D
No M3/4 445 c 288/43 dtd 17.5 46
Solicits instructions in regard to
the Deputy Commissioner as interim
President presiding at the
election of non-official Members

Sub the Deputy Comm Kisumu,
states that rule 6 of the rules re
the election of Members of Town
Municipal councils lays down
that the Municipal Councillors
present at an election meeting
should select one among them-
selves who is not himself a
candidate for the office of President
for presiding at the meeting. He
states that the above rule not having
been changed, they still possess all the
Statutory force. In fact, they have
been appended to the rules under the
Town Municipalities Act issued in
August 1933. He states that
this procedure allows the DC to hold
hear appeals apart the election. He
therefore considers it necessary to allow
the municipal councillors to elect their own
President for the election meeting

Libd pr ades

Jol
22/5

719

enquires &

Under section 23(b) of the Income Tax Act, it is laid down that during the vacancy of the office of the President or whilst etc, the D.C or the person performing the duties of the D.C for the time being in the case of this at Dist Headquarters shall perform the functions of a President must see 24(1)(a), it is laid down that it shall be the duty of the President to preside unless prevented by reasonable cause at all meetings of the Cl etc to regulate the conduct of the business at such meetings

Rule 4 of the Election Rules of 1937 as inconsistent with the provisions of section 23(b) supra to always be treated as ultravires

Under sec 9(1)(b)(ii), the D.C has to be construed as being a member of the Cl, as he performs the functions of the office of the President from time to time as notified by the Govt

The case does not go to a court of law as it is not provided for under the Act or the rules framed thereunder

Hence the D.C is competent to preside at the meeting for the election of the President the D.C may be informed accordingly

Law dept for [illegible]

7265 J 7316

Continuation Sheet — File No / Current No — 42 of 43 Page

I agree – The D.C. has to preside
Rules have the, Enc Daily amended

Acs 22-5-44

Mr Le R S G
may issue immediately the above election commandments 22 5 44

Acs 23 5 44

1) Issue the Telegram instructions at once

2) Resubmit with a draft letter also

for 24/5/44

OFFICE OF THE MINISTER
FOR L S G & P H
Date 22nd/5/44
No 8077

The telegram has issued
A draft letter is put up as directed

T SECT N
23 MAY 1944
GE SECTT.

23/5

Lawrey 23/5

Acs 23 5 44

Immediate

12/- To the D.C. Shimoga Dt
No L 11811 of 23 5 44
Instructs as above & states that necessary action may be taken accordingly

26/5

B

Continuation Sheet. File No. / Current No of Page

C F No 45]

M1 42-43-120

GOVERNMENT OF MYSORE

IMMEDIATE

Telegram / phone

OFFICE OF
the Deputy Commissioner,
Shimoga Dist.
Shimoga,

No M3-P L 445 C 2884/43-44.
Encls

Date 17th May 1944

To

The Legal Remembrancer and
Secretary to Government,
Law Department, BANGALORE

GEN & REV. SECRETARIAT
7265
18 MAY 1944
L S & G BRANCH

Sir

With reference to your Memo No L.738-46/M1. dated 29th July 1941 communicating for information your letter NoL 435/M1 56-41-2 dated 21st July 1941 stating that interim Presidents of Town Municipal Councils shall preside at the elections of non-official Presidents, but, that they cannot vote, I have the honour to elucidate the point involved a little further, and seek instructions in the matter

The rules for such elections are given in G O No.3055-M1.207-27 1 dated 26th November 1927

They were passed under Sub Section (2) (c) of Section 23 of the Mysore Municipal Act, 1906 Though the Act has changed, these rules have not been changed and still possess all the statutary force Under rule 4 of these rules, "the councillors present on the day of election shall, ~~for the purpose~~ select one among themselves as President - of course a person who is not a candidate" It would therefore be illegal for me who is not even a member of the Council to preside on the occasion. Secondly, the petition for contesting the validity of the Election is to be filed before the Deputy Commissioner himself under Rule 72 This clearly shows that the Deputy Commissioner should not lose his status as a tribunal for impartial enquiry contemplated in Rule 72 and 8 by being personally present at the Election I therefore think that it is better to allow the Councillors themselves under Rule 4 to elect a temporary President on the day of Election, of course, other than a candidate, and proceed to elect their permanent President

The Election of a President in the Town Municipal Council, Shimoga, which is fixed for 24th instant, is likely to be hotly contested

between a Congress candidate and an Independent candidate

There is likely-hood of a tie resulting on account of equal votes on either side.

I am therefore of opinion that the election rules of 1927 should be strictly observed and the validity of your letter No.L 435/M1.56-41-2 dated 21st July 1941 should not be allowed to be questioned in a Court of Law

I request the favour of instructions by return of post

I have the honour to be.
Sir,
Your most obedient servant

17.7.44

Deputy Commissioner,
Shimoga District

CRR/2

C F No 45]

GOVERNMENT OF MYSORE

' IMMEDIATE '

Telegram / phone

No M3 P L 445 C 2884/43-44
Encls 1.

OFFICE OF
the Deputy Commissioner,
Shimoga District,
Shimoga,

Date 22nd May 1944.

To
The Legal Remembrancer
and Secretary to Government,
Law Department, BANGALORE

GEN & REV SECRETARIAT 731/6 23 MAY 1944 LEGAL BRANCH

Sir

In confirming the marginally noted Telegram issued to you this day, I have the honour to request the favour of early orders of Government in the matter

LAWSEC BANGALORE
REFERENCE LETTER M3 PL 445 C.2884/43-44
17th INSTANT SOLICIT IMMEDIATE INSTRUCTIONS
PRESIDENTS ELECTION 24TH INSTANT

DEPCOM

I have the honour to be,
Sir,
Your most obedient servant

For Deputy Commissioner,
Shimoga District.

CRR/2

DSC

SECY LEVI DEPT
23 MAY 1944
GOVT OF MYSORE

Q

POSTS AND TELEGRAPHS DEPARTMENT

NOTICE	Charges to Rs.	As.	Office stamp
This form must accompany any inquiry made respecting this telegram			

Handed in at (Office of Origin)	Date	Hour	Minutes	Service Instructions	Words
Shimoga	22				19

TO Lawsea Bangalore.

Reed here at 11/5 M

Reference letter no. 3 P L 445
C 2884/43/44. 17th Instant solicit
immediate instructions presidents
election 24th Instant

NB—The name of the Sender if telegraphed is written after the [illegible]

Eden Press Calcutta—No. 62 (5120/3-39)—27-5-43—1,50,000 P.S.

= Depcomm 2

G R S App F G 3

GENERAL AND REVENUE SECRETARIAT

(*Continuation sheet draft form*)

Express

Depcom

Shimoga.

Your letter regarding election of President Shimoga Town municipal Council You have to preside on the occasion Letter follows

Lawsec.

(Signed) G Ramachandra

23.5.44 For Law Secy & Govt

To the OB to issue the telegram as per orders on the file.

23/5 Do the Typing section to make two copies of the above telegram for issue immediately

23/5

For

WD 0282—GPB— 22 500—14 3 38

Appendix F G —1]

SUBJECT

Diary No of letter replied to

General and Revenue Secretariat

( )

the *194*

Date of issue 23/5

Signed by for Secretary

List of enclosures

Copied by

Examined by 23/5

Immediate

Section HI

File No 42-43

Serial No ~~122~~ 12-1

No L/11871

To

The Deputy Commissioner

Shimoga Dt

Sir,

I am directed to confirm the marginally noted telegram issued today and to state, with reference to your letter No M 3 P L 445 C 2884/43-44 of 17th May 1944, that under Section 23 (6) of the Mysore Town Municipalities Act it is laid down that during the vacancy of the office of the President of a Municipality, the D C or the person performing the duties of the D.C for the time being

WD 04161—GPB—60 000—24 10 41

in the Case of Municipalities at District Headquarters shall perform the functions of a President Under Sec 24 (1) (a), it is laid down that it shall be the duty of the President to preside unless prevented by reasonable cause at all meetings of and also to regulate the Conduct of the business at such meetings The meeting for the election of a President, is one such meeting

Rule 4 of the Election rules of 1927 is inconsistent with the provisions of Sec 26(6) of the Act referred to above, and has to be treated as ultra vires Action is being taken separately to amend the same suitably

~~Under Rule 4 (1)(b) (ii) the DC has to be Constituted as being a member of the Board as he performs the functions of the office of the President from time to time as notified by Govt~~

I am to add that however the Case cannot go up to a Court of Law as such a procedure is not provided for under the Act or the Rules

G R S App F G 3

GENERAL AND REVENUE SECRETARIAT

(*Continuation sheet draft form*)

Necessary arrangements may be taken accordingly

A

Govt. ~~have~~ considered ~~it~~ to that the D C is ~~incompetent~~ to preside at the meeting for the election of the President and I am accordingly to request you to preside at the meeting for the election of the President of the Shimoga Town Municipal Council

I have &c

Secretary to Govt
Law Dept

23

WD 03697—GPB—30 000—2 2 40